

Agenda Item #: 3-C- 1

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date: April 1, 2008

☒ Consent ☐ Regular
☐ Ordinance ☐ Public Hearing

Department:

Submitted By: Engineering & Public Works Department

Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: The third amendment to Agreement R2004-1620, for professional consulting services with Kimley-Horn and Associates, approved on July 13, 2004.

Summary: This Agreement provides for professional services to develop a database showing the traffic from all approved unbuilt projects Countywide (Project). This Amendment will extend the date for completion of the work from July 31, 2007 to March 31, 2008 and reallocate budget amounts between Labor Task H and reimbursable expenses to better match actual Project effort and expenses.

District: Countywide (LB)

Background and Justification: The development of the Project, which covers the entire roadway system and then publishes this information to the web, has proven to be more difficult than expected. It has required more time and effort than originally contemplated, postponing completion and increasing the labor cost. However, it has also relied on electronic submittals and virtual meetings to a much greater extent, reducing the actual reimbursable expenses incurred by the consultant.

This Amendment will provide for a time extension to allow for completion of the Project and will authorize an increase of \$15,098.76 in the budgeted amount for Labor Task H and a reduction of the same amount (\$15,098.76) for reimbursable expenses. The total budgeted amount for this contract (i.e., labor and reimbursable expenses) will not change.

Attachments:

1. Agreements (2)
 2. Original Agreement R2004-1620, including Scope of Work and Fee Schedule
 3. First Amendment to Agreement - R2006-0957
 4. Second Amendment to Agreement - 2007-1055
 5. Letter from Consultant requesting Third Contract Amendment
-

Recommended by: _____

Division Director

03/05/08

Date

Approved by: _____

County Engineer

03/11/08

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE
POSITIONS (Cumulative) _____

Is Item Included in Current Budget? Yes _____ No _____
Budget Acct No.: Fund _____ Dept. _____ Unit _____ Object _____
Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 4/13/08

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

The total contract amount, \$288,276.59, has not changed.

atwillwhite 3-17-08
OFMB (10) SN 3/14/08 CN 3/12/08
3/13/08

Jim J. Jacoby 3/17/08
Contract Dev. and Control
3/17/08

B. Approved as to Form and Legal Sufficiency:

[Signature]
Assistant County Attorney

This amendment complies with
our review requirements.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

**THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES BETWEEN
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES,
INC.**

This Third Amendment to Agreement for Professional Engineering Services is made as of _____, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

RECITALS

WHEREAS, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

WHEREAS, on June 6, 2006 the County approved the First Amendment to that Contract (R2006-0957) to extend the completion date to July 31, 2006, and

WHEREAS, on July 10, 2007 the County approved a Second Amendment to that Contract (R2007-1055) to extend the completion date to July 31, 2007, and

WHEREAS, the County and Consultant desire to further amend the completion date of that Contract to allow work to continue until March 31, 2008, and

WHEREAS, the County and Consultant desire to further amend the Contract to allow reallocation of costs between Labor Task H and Reimbursable Expenses.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from July 31, 2007 to March 31, 2008.

Article 2. Section 4.1.1 of the Contract, regarding payments to consultant, is hereby amended to change the total labor fee from \$264,000 to \$279,098.76.

Article 3. Exhibit B of the Contract, regarding the fee schedule, is hereby amended to change the labor fee for Task H from \$58,400.00 to \$73,498.76, to change the total labor fee from \$264,000 to \$279,098.76, and to change the total reimbursables from \$24,232.08 to \$9,133.32.

Article 3. This amendment shall be retroactive to July 31, 2007.

Article 4. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

COUNTY:
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

BY: _____
Addie L. Greene, Chairperson

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

BY: _____
Deputy Clerk

SEAL

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY: _____
COUNTY ATTORNEY

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Don Messer
ENGINEERING DEPARTMENT

CONSULTANT:
KIMLEY-HORN AND
ASSOCIATES, INC.,
a Florida Corporation

BY: Frederick W. Schwartz
Frederick W. Schwartz, P.E.
Senior Vice President

CORPORATE SEAL

WITNESS:

BY: Lisa A. Milam
(Printed Name)

BY: Sharda Dunne
SHARDA DUNNE
(Printed Name)

**STANDARD FORM
AGREEMENT FOR PROFESSIONAL SERVICES
ENGINEERING SERVICES
BETWEEN
PALM BEACH COUNTY AND CONSULTANT**

This is an Agreement made as of JUL 13 2004, 2004, between **PALM BEACH COUNTY, FLORIDA (COUNTY)** and Kimley-Horn and Associates, Inc. (**CONSULTANT**), a Engineering firm having an office and a place of business at 4431 Embarcadero Drive, *West Palm Beach, Florida 33407, and having Federal Tax ID #56-0885615*. The **COUNTY** intends to have the Consultant provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County (hereinafter called the **PROJECT**).

The **COUNTY** and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **CONSULTANT** and the payment for those services by **COUNTY** as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 General

1.1.1. The **CONSULTANT** shall develop a data base that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County as more specifically set forth in the Scope of Work detailed in Exhibit A

The data base shall provide the following on a year by year basis:

1. Traffic from approved but un-built projects.
2. Adjustments of "double counting" (adjustments between attraction and productions).
3. Adjustments for background growth.
4. Current traffic counts.

1.1.2. The outputs from the data base shall include:

1. Two-way peak hour, peak season traffic for the AM and PM peak hours.
2. Directional peak hour, peak season traffic for the AM and PM peak hours.
3. Intersection turning movement counts.

1.1.3. The **CONSULTANT** has, during the selection and negotiation process which has preceded this agreement, represented to the **COUNTY** that the **CONSULTANT** is possessed of that level of skill, knowledge, experience and expertise that is commensurate with engineering firms of national repute in the areas of practice required for this project. The **CONSULTANT** acknowledges that the **COUNTY** has relied on the **CONSULTANT'S** representations of skill, knowledge, experience and expertise. By executing this contract, the **CONSULTANT** agrees that the **CONSULTANT** will exercise that degree of care, knowledge, skill and ability as other engineering firms possessing the degree of skill, knowledge, experience and expertise which the **CONSULTANT** has claimed. The **CONSULTANT** shall perform such duties as may be assigned without neglect. The **CONSULTANT** accepts the relationship of trust and confidence established by this Agreement, and covenants with the **COUNTY** to cooperate with the **COUNTY** and to utilize the **CONSULTANT'S** skill, efforts and judgment commensurate with engineering firms of national repute in the

areas of practice required for this project. The **CONSULTANT** agrees to perform each assignment in an efficient and economical manner consistent with the **COUNTY'S** interests and consistent with the **COUNTY'S** stated objectives and recognized professional engineering standards.

The **CONSULTANT** further contracts with the **COUNTY** to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the Accessibility provisions of the Americans with Disabilities Act (ADA) shall be complied with and incorporated into the project.

SECTION 2 - COUNTY'S RESPONSIBILITY

COUNTY shall provide the following in a timely manner so as not to delay the services of **CONSULTANT**.

- 2.1. Requested traffic reports for approved developments, when available.
- 2.2. All available roadway link volumes.
- 2.3. All available intersection turning volumes.

SECTION 3 - PERIODS OF SERVICE

3.1. This is an Agreement for specific professional engineering services as outlined in the Scope of Work detailed in Exhibit A. This Agreement will commence on the day and year first written above and shall remain in effect until the completion of the work outlined in the Scope of Work detailed in Exhibit A. Work on this contract shall be completed by December 31, 2005.

SECTION 4 - PAYMENTS TO CONSULTANT

4.1. Methods of Payment for Services and Expenses of CONSULTANT.

4.1.1 Basic Service: The COUNTY will pay the CONSULTANT a total labor fee of \$264,000 for the scope detailed in Exhibit 'A' based on the Fee Schedule detailed in Exhibit B.

4.1.2 4.1.2. Reimbursable expenses: The COUNTY will pay the CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY. The payment reimbursable expenses shall not exceed estimated costs, as detailed in the fee Schedule in Exhibit B. No reimbursable expenses will be incurred without additional authorization from the COUNTY.

4.1.3. Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number R-89-633 adopted April 4, 1989.

4.2. Payments

4.2.1. Payments to the CONSULTANT shall be due and payable monthly in proportion to the percentage Task completed as approved and accepted by the COUNTY.

4.3. Other Provisions Concerning Payments

4.3.1. Records of CONSULTANT'S Salary Costs pertinent to CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the COUNTY on request prior to final payment for CONSULTANT'S services.

SECTION 5 - GENERAL CONSIDERATION

5.1. Termination

This Agreement may be canceled by the CONSULTANT upon thirty (30) days prior written notice to the COUNTY'S representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY with or without cause, immediately upon written notice to the CONSULTANT. Upon any such termination, the CONSULTANT hereby waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits, on account thereof. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination plus reasonable close out costs. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

A. Stop work on the date and to the extent specified.

- B. Terminate and settle all orders and subcontractors relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

5.2. **Disclosure and Ownership of Documents**

5.2.1. Upon completion and acceptance of the final work, the **CONSULTANT** shall furnish to the **COUNTY**, the original drawings, field notes and all documents and materials prepared by and for the **COUNTY** under this Agreement. The **CONSULTANT** may keep a reproducible set of the original drawings and shall keep all other data collected during the provision of the services. The **COUNTY** may, at its expense, obtain copies of any data which the **CONSULTANT** has accumulated in the process of providing the services on this Project.

Any reuse without written verification or adaptation by the **CONSULTANT** for the specific purpose intended will be at the **COUNTY'S** sole risk and without liability or legal exposure to the **CONSULTANT**.

5.2.2. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the **COUNTY** or at its expense will be kept confidential by the **CONSULTANT** and will not be disclosed to any other party, directly or indirectly, without the **COUNTY'S** prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased, under this Agreement at the **COUNTY'S** expense shall be and remain the **COUNTY'S** property and may be reproduced and reused at the discretion of the **COUNTY**.

5.2.3. Notwithstanding any other provision to the contrary in this agreement, the **COUNTY** and the **CONSULTANT** shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

5.2.4. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.3. **Insurance**

5.3.1. The **CONSULTANT** shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the **COUNTY**.

5.3.2. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The **CONSULTANT** shall furnish Certificates of Insurance to the **COUNTY'S** representative. The Certificates shall clearly indicate that the **CONSULTANT** has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no cancellation of the insurance shall be effective without thirty (30) days prior written notice to the **COUNTY'S** representative. Compliance with the foregoing requirement shall not relieve the **CONSULTANT** of its liability and obligations under this Agreement.

5.3.3. The **CONSULTANT** shall maintain, during the term of this Agreement, standard Professional Liability Insurance in the minimum amount of \$1,000,000 per claim..

5.3.4. Insurance and Indemnification - The **CONSULTANT** shall maintain Professional Liability insurance covering the **CONSULTANT** for sums which the **CONSULTANT** shall become legally obligated to pay as damages because of liability arising out of negligence, error or omission the professional services required in the

performance of the **CONSULTANT'S** agreement with the **COUNTY**. Required coverage shall be for Limits of Liability not less than \$1,000,000.

5.3.5. **SPECIAL INSTRUCTIONS:** Occurrence form Professional Liability Insurance is highly preferred, however, in the event the **CONSULTANT** is only able to secure Claims-Made Professional Liability Insurance special conditions apply. Any Certificate of Insurance issued to the **COUNTY** must clearly indicate whether the coverage is on a Claims-Made basis. Should coverage be afforded on a Claims-Made basis the **CONSULTANT** shall be obligated by virtue of this Agreement to maintain insurance coverage in effect with no less limits of liability nor any more restrictive terms and/or conditions for a period of 5 years from the date of this Agreement. **CONSULTANT** shall not commence work under this Agreement until he has obtained all insurance required under this paragraph and such insurance has been approved by **COUNTY**. **CONSULTANT** shall maintain during the term of the Agreement, his standard Professional Liability Insurance in the amount of \$1,000,000 (with standard deductions of not more than \$750,000).

5.3.6. The **CONSULTANT** shall maintain, during the life of this Agreement, comprehensive general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence to protect the **CONSULTANT** from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the **CONSULTANT** or by anyone directly employed by or Agreement with the **CONSULTANT**.

5.3.7. The **CONSULTANT** shall maintain, during the life of this Agreement, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damage liability to protect the **CONSULTANT** from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the **CONSULTANT** or by anyone directly or indirectly employed by the **CONSULTANT**.

5.3.8. The **CONSULTANT** shall maintain, during the life of this Agreement, adequate Worker's Compensation Insurance and Employer's Liability Insurance in at least such amount as are required by law for all of its employees per Florida Statute 440.02.

5.3.9. All insurance, other than Professional Liability and Worker's Compensation, to be maintained by the **CONSULTANT** shall specifically include **PALM BEACH COUNTY** as an "Additional Insured". The Additional Insured endorsement shall read Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees, and Agents".

5.4 Indemnification

Pursuant to Florida Statute, FS. 725.08 (1), the **CONSULTANT** shall indemnify, and hold harmless the **COUNTY**, and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever to the extent arising out of, because of, or due to negligent act or omission or commission of the **CONSULTANT**, its officers, agents, or employees. Neither the **CONSULTANT**, nor any of its officers, agents, or employees will be liable under this section for damages arising out of injury or damage to persons or property to the extent caused or resulting from the sole negligence of the **COUNTY** or any of its officers, agents, or employees.

5.5 Controlling Law

5.5.1. This Agreement is to be governed by the laws of the State of Florida. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such

party or parties may be entitled as a result of that action.

5.6 Successors and Assigns

5.6.1. COUNTY and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of COUNTY and CONSULTANT (and to the extent permitted by Paragraph 5.6.2. the assigns of COUNTY and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.6.2. Neither COUNTY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

5.6.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than COUNTY and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of COUNTY and CONSULTANT and not for the benefit of any other party.

5.7 Subcontracting

5.7.1. The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

5.7.2. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

5.7.3 In accordance with Palm Beach County Small Business Enterprise (SBE) Ordinance #2002-064, as amended from time to time, and M/WBE Ordinance #93-28, as amended by Ordinance #95-5, the annual goal for SBE and/or M/WBE participation for Professional Services is 15%, the following participation resulted for this Agreement:

<u>0</u> %	SBE Participation
<u>0</u> %	African/American Participation
<u>0</u> %	Hispanic Participation
<u>20</u> %	Women Participation
<u>0</u> %	Other (to be used in any category)

5.7.4 The CONSULTANT agrees to abide by all provisions of the SBE and/or M/WBE Ordinance and understands that failure to comply with any of the requirements will be considered a breach of contract.

5.7.5 The CONSULTANT incorporates Exhibit "D" (Participation of SBE and/or M/WBE Consultants) and Exhibit "E" (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, dollar

value of the SBE and/or M/WBE participation on Exhibit "D" and the Letter of Intent, Exhibit "E", signed by each of the listed SBE and/or M/WBE sub-consultants agreeing to perform the services at the listed dollar value.

5.7.6 The **CONSULTANT** understands that each minority and/or woman owned firm utilized on this contract must be certified by Palm Beach County in order to be counted toward the contract goal.

5.7.7 The **CONSULTANT** understands that it is the responsibility of the County Department letting the Agreement and the SBE and/or M/WBE Office to monitor compliance with the SBE and/or M/WBE Ordinance requirements. In that regard, the **CONSULTANT** agrees to furnish progress payment reports, with each billing, to both parties on the progress of the SBE and/or M/WBE participation for this Agreement.

5.7.8 The **CONSULTANT** further agrees to provide the SBE and/or M/WBE Office with a copy of the **CONSULTANT'S** agreement with the SBE and/or M/WBE sub-contractor or any other related documentation upon request.

5.7.9 The **CONSULTANT** understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of the Agreement as it relates to the use of SBE and/or M/WBE firms. Any SBE's and/or M/WBE's which, for any reason, no longer remain associated with the contract of the **CONSULTANT** shall be replaced with other certified SBE's and/or M/WBE's, unless approval to the contrary is granted by the **COUNTY**.

5.7.10 The **CONSULTANT** understands that he/she is prohibited from making any agreements with the SBE and/or M/WBE in which the SBE and/or M/WBE promises not to provide sub-consultants quotations to other bidders or potential bidders

5.7.11 The **CONSULTANT** agrees to maintain all relevant records and information necessary to document compliance with the SBE and M/WBE Ordinances, and will allow the **COUNTY** to inspect such records.

5.7.12 The **CONSULTANT** shall certify in writing that all sub-contractors, sub-consultants and suppliers have been paid for work and materials from previous progress payments received, less any retainage, by the **CONSULTANT** prior to receipt of any further progress payments. During the term of the Agreement and upon completion of the Agreement, the **COUNTY** may request documentation to certify payment to sub-contractors, sub-consultants or suppliers. This provision in no way creates any contractual relationship between any sub-contractor, sub-consultant, or supplier and the **COUNTY** or any liability on the **COUNTY** for the **CONSULTANT'S** failure to make timely payment to the sub-contractor, sub-consultant or supplier.

5.8 Personnel

5.8.1. **CONSULTANT** represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement.

5.8.2. Such personnel shall not be employees of or have any contractual relationship with the **COUNTY**. All of the services required herein shall be performed by the **CONSULTANT** or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, licensed or permitted under state and local law to perform such services.

5.8.3. The **CONSULTANT** warrants that all services shall be performed by skilled and competent personnel in accordance with all applicable national, federal, state, and local professional and technical standards.

5.9 Availability of Funds

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R2004 1620

5.9.1. The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

5.10 Conflict of Interest

5.10.1. CONSULTANT represents that employees directly engaged in the performance of the Basic Services hereunder will not be engaged in the performance of other services which constitute a conflict of interest.

5.10.2. The CONSULTANT shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT.

5.10.3. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Agreement.

5.11 Independent Contractor Relationship

5.11.1. The CONSULTANT and sub-consultants are, and shall be, in the performance of all work services and activities under this Agreement, Independent Contractors, and not employees, agents, or servants of the COUNTY. The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement. The CONSULTANT shall be responsible to the COUNTY for all the work or services performed by the CONSULTANT or any person or firm engaged as a sub-consultant to perform work in fulfillment of this Agreement.

5.12 Access and Audits

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

5.13 Entirety of Contractual Agreement

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

5.14 During the term of this Contract, the COUNTY may require professional services that are the same or similar to those described in this agreement. The COUNTY may, at its sole discretion, obtain said services in accordance with the State of Florida Consultants Competitive Negotiation Act. If the COUNTY so elects, it is mutually understood that the relationship between the CONSULTANT and the COUNTY under this Contract shall be considered as neither barring the CONSULTANT from, nor granting special consideration to the

CONSULTANT in participating in the selection process for a consultant to provide such additional services.

SECTION 6 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

6.1.1. CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

Federal & State Tax

The following Exhibits are attached to and made a part of this Agreement.

Exhibit A: Scope of Work consisting of (8) pages

Exhibit B: Fee Schedule consisting of (2) pages.

Exhibit C: Affidavit of Statements: Truth in Negotiation, Prohibition Against Contingent Fees, Non-Discrimination, and Public Entity Crimes Statement consisting of (1) pages.

Exhibit D: Letter of Intent to Perform A an SBE, M/WBE, and/or Sub-consultant, with County Minority Certification consisting of (4) pages.

Exhibit E: Registration and/or certifications consisting of (4) pages.

6.3. This Agreement (consisting of pages 1 to 10 inclusive), together with the Exhibits and Schedules identified above constitute the entire Agreement between **COUNTY** and **CONSULTANT** and supersede all prior written or oral understandings. This Agreement and said Exhibits and Schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

THIS SECTION LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first above written.

OWNER:

PALM BEACH COUNTY, FLORIDA,
a Political Subdivision of the
State of Florida

CONSULTANT:

Kimley-Horn and Associates, Inc.
a Florida Corporation

BOARD OF COUNTY COMMISSIONERS

BY: 

Karen T. Marcus, Chair JUL 13 2004

BY: 

Frederick W. Schwartz, P.E.,
Senior Vice President

ATTEST:

Dorothy H. Wilken, Clerk
Circuit Court

CORPORATE SEAL

WITNESS:

BY: 

Deputy Clerk

BY: 

(Printed Name)

BY: 

(Printed Name)

APPROVED AS TO TERMS
AND CONDITIONS:

BY: 

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: 

COUNTY ATTORNEY

P:\85294\lrcb\2004\TPS_Database\0704_Final_Contract.doc

3621

Page 10 of 10

R2004 1620

EXHIBIT A

3622

R2004 1620



EXHIBIT " A "
SCOPE OF SERVICES

**PALM BEACH COUNTY TRAFFIC PERFORMANCE STANDARDS
DATABASE**

PROJECT UNDERSTANDING

KHA understands that this effort is intended to provide the Palm Beach County Traffic Division with a database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County. The database will be capable of providing traffic projections on an annual basis for each roadway link. The database will also be capable of being updated as development projects are completed (reducing data base traffic), as new development projects are approved (adding database traffic), and as new traffic counts are completed.

For each link, the data base shall provide the following on a year by year basis:

1. Traffic from approved but un-built projects.
2. Adjustments of "double counting".
3. Adjustments for background growth.
4. Current traffic counts.

The outputs from the data base shall include:

1. Two-way peak hour, peak season traffic for the AM and PM peak hours.
2. Directional peak hour, peak season traffic for the AM and PM peak hours.
3. Intersection turning movement counts

SCOPE OF SERVICES

Task A.1 – Initial Meeting

KHA will attend one meeting with staff from the Palm Beach County Traffic Division (including staff from traffic count staff), the Palm Beach County Planning Division and GIS staff. At that meeting, KHA will discuss the availability and current format of committed development data for the unincorporated area and review the data information to be requested from the incorporated municipalities. KHA will also review the existing GIS database platform and formats.



Task A.2 – Data Base Needs Assessment

KHA will attend two (2) meetings with Palm Beach County Information System Services staff (ISS), GIS, Traffic Division staff to review initial data base and map interface. As part of these meetings, KHA will determine the functional requirements of the GIS applications and relational database required to support the Palm Beach County Traffic Database to be developed. The functional requirements will focus on determining the input formats, output formats as well as the maintenance capabilities the database will need to have. These functional requirements will be used at a later date to refine our estimates of the effort involved in Task H.

Also, as part of this Task, KHA, with the assistance of the County, will develop a form that will establish the level and category of data that will need to be collected on each committed development. KHA will prepare a draft of this form in advance of the second meeting to be attended under this Task. KHA will then review this form with County staff to receive their input and comments. One revision will be made to the form based on those comments. It is envisioned that the following information for each committed development will be recorded:

- Current project name, alternate name
- Project Buildout Year
- Land Use Data (Productions/Attractions)
- Trip Generation Rates (Daily, AM & PM)
- Amount of project remaining to be built
- Project assignment
- Peak hour traffic volumes (links and intersections)
- Parcel ID numbers
- Reference Traffic Analysis Zone (TAZ)
- Project approval year (first year of concurrency reservation/development order)

The foregoing list can be revised based on subsequent discussions with and recommendations from County staff.

KHA will prepare one technical memorandum summarizing the functional requirements that will guide the development of the database.

Task B – Data Collection

KHA will prepare a letter to be distributed to the Palm Beach County Planning and Zoning Division and all municipalities within the County (on behalf of the Palm Beach County Traffic Division) which will provide a general overview of the project and request from them assistance regarding development approval information within the unincorporated and incorporated areas respectively.



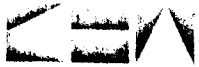
It is envisioned that except for DRIs and major projects (*i.e.* developments generating more than 7,000 daily trips), many of the current development approval information will have a maximum age of 5 years old. Therefore much of the collection will focus on projects that are five years old along with major DRIs.

KHA will then meet once with each of the following agencies to obtain from them (where available) development approval information and information regarding the amount of completed development for each approved project within their respective jurisdictions. The focus of these meetings will be confined exclusively to data retrieval:

- Palm Beach County Traffic Division
- Palm Beach County planning and Zoning Division
- The Village of Tequesta
- Town of Jupiter
- City of Palm Beach Gardens
- The Town of Lake Park
- The City of Riviera Beach
- The Village of Royal Palm Beach
- The Village of Wellington
- The City of West Palm Beach
- The City of Lake Worth
- The City of Boynton Beach
- The City of Delray Beach
- The City of Boca Raton
- The City of Greenacres

While the 13 municipalities from the above list comprise approximately 35% of the 37 municipalities in Palm Beach County, they represent those incorporated areas of the County with the most growth. The retrieval of development approval information from other municipalities (not listed above) that are appropriate for consideration based on a recommendation from County staff (responsible for review of approval projects with those other municipalities) will be undertaken as part of the additional services for this contract.

Additional meetings that may become necessary with any of the above will be attended as part of the additional services for this contract. KHA will provide feedback to the Palm Beach County Traffic Division on these data collection efforts prior to proceeding with Task C in the form of a technical memorandum. Through this feedback, KHA may revise its estimate of the effort involved in undertaking Task C.



KHA will also review projects for which we have either prepared traffic studies or obtained data on other committed development in the preparation of those traffic studies, to supplement the efforts of the data collection listed as a part of this Task.

Task C – Summarize Available Data and Identify Missing Data

KHA will summarize the data collected in Task B. As part of the review of the data collected, KHA will in conjunction with the sub-consultant identify database components that are either missing or requiring revisions from traffic studies including but not limited to:

- build-out year
- units remaining to be built,
- peak hour traffic.
- peak hour directional traffic
- Institute of Transportation Engineers (ITE) Trip Generation Handbook code numbers (identified as production or attractions)
- link numbers
- project assignment.
- Limited study areas
- Approved development but missing traffic studies

Prior to undertaking any calculations to “fill-in” the missing data, KHA will prepare a technical memorandum summarizing the extent of missing data and recommending procedure to “fill-in” those data as well as, the anticipated scope of the effort involved.

Task D – Data Compilation

KHA will meet once with the Palm Beach County Traffic Division to review the Technical Memorandum from Task C and establish a procedure to “fill-in” the missing data. KHA will calculate or develop the missing data identified in Task C. These data will be combined with the data obtained in Task B and then compiled to facilitate input to the database interface. The data will be compiled according to a format agreed upon in the initial meetings with GIS and ISS County staff so as to maintain consistency with the database structure.

Task E – Double Counting Adjustment

KHA will research appropriate techniques and methods to address the issue of double counting of trips to account for the interaction between productions and attractions of committed development approvals. As part of this effort, KHA will consider the current approach allowed by the County which includes applying nominal percentage reductions to the cumulative sums of productions and



attractions on a link by link basis and then taking the lower of the two values as the adjustment. The research will include a review of the nominal percentages and the appropriate level at which they could be set and the variables that could affect these levels.

KHA will prepare a technical memorandum that summarizes these findings.

Task F – Background Traffic Correction

KHA will evaluate the estimated background growth due to historic growth rates and area wide growth rates for each sub area. As part of this evaluation KHA will compare the database output for each link to historical growth rate for each link and area wide growth rate. In addition KHA will establish procedures to determine the traffic diversions due to new road construction within Palm Beach County.

KHA will then prepare recommendations to the Palm Beach County Traffic division for growth rates to be added to the data base.

KHA will meet once with the TPS technical sub committee to explain and receive comments on this Task.

Task G – Intersection Turning Movement Projections

KHA will evaluate the appropriate methodology to use for developing intersection turning movements from roadway link projections. As part of this evaluation KHA will compare software developed by the Florida Department of Transportation (FDOT) such as TURNS 5A and TMTTOOL. KHA will apply this methodology to a test group of ten (10) intersections. KHA will also evaluate the potential challenges to incorporating any of these third party software into the database structure such as:

- Proprietary issues.
- Requirement for individuals accessing the database to have the software installed on their machine.
- Maintaining security of database while allowing intersection queries on demand among other things.

Specific recommendations as to the incorporation of the appropriate turning movement software into the database structure will be made to the Palm Beach County Traffic Division which can then be implemented under an additional services agreement to this scope of services.



KHA will meet once with the TPS technical sub committee to explain and receive comments on this Task.

Task H – Database Structure and Map Interface

KHA will assist the Palm Beach County GIS and ISS departments in the development of the database and map interface. The efforts to be undertaken in this task will be based on the guidelines developed under Task A.2 in the Database Needs Assessment. As part of this effort KHA will do the following:

- Review the roadway network developed by the GIS and ISS Departments to check its adequacy and then make appropriate adjustments.
- Develop map interface to facilitate eventual data entry by County staff and/or their designated consultants.
- Design trip generation module and interface for data input. It is envisioned that the trip generation module will facilitate the calculation of peak hour trips for each committed development based upon trip generation rates and equations for a predetermined number of land uses which has the flexibility of being expanded as the need arises.
- Design link data entry module and interface for data input. It is envisioned that the link data entry module will facilitate the input of link based attributes for committed developments including but not limited to traffic assignment and link ID references (per guidelines in Task A.2).
- Design intersection data entry module and interface for data input.
- Design and implement existing data module. It is envisioned that the existing data module will be designed to tie in with the existing traffic count database maintained by the traffic count staff for both links and intersections.
- Design and implement historic growth module. It is envisioned that the historic growth module will be designed to extract historic growth information from the County's historic traffic count data from database.
- Design and implement area wide growth module. It is envisioned that the area wide growth module will be designed to facilitate the calculation of area wide growth rates for predetermined geographic areas by aggregating the trends of the historic growth on links in those areas.
- Design and implement traffic diversion functional requirements. It is envisioned that this module will facilitate the application of adjustments for traffic diversions to each link determined off-line but linked back to the database.
- Design and implement assignment module. It is envisioned that this module will facilitate the calculation of peak hour trips on each link for each committed development by tying back the percentage assignment of those developments (as programmed in the link data entry module) to the trip generation module.
- Design and implement "double-counting" module.



It is envisioned that this module will facilitate the application of "double-counting" adjustment factors to each link to be determined within the database through a comparison of the productions and attractions on a link basis.

- Design and implement future link traffic volumes module. It is envisioned that this module will facilitate the ability to provide interim year projections on each link based on the start year and buildout year of committed developments on each link.
- Design and implement future intersection traffic volume module. It is envisioned that this module will facilitate the projection of future intersection turning movements by incorporating the future link traffic volumes into an off-line software such as TURNS 5A which can be launched when an intersection is queried for its turning movements.
- Design and implement link output reports. It is envisioned that this module will facilitate the viewing of reports that can be included as part of future traffic studies that will be prepared using information from the database.
- Design and implement intersection output reports.
- Design and implement visual location of project. It is envisioned that this will facilitate the spatial location of each committed development to be included in the database.

KHA will then input a sample of the data compiled in Task D in order to test the database and map interface. KHA will assist Palm Beach County in revising the database structure and/or map interface to improve the efficiency of data entry input and output utilization.

KHA will meet once with the TPS technical sub committee to explain and receive comments on this Task.

Task I – Data Entry

KHA will input data using the map interface.

Task J – Test Output

KHA will test the output from the database which will include checking for reasonableness of outputs and also undertake general trouble shooting.

KHA will meet with the TPS technical sub committee to explain and receive comments on this Task.



Task K – Develop Graphical User Interface and Reporting Modules

KHA will develop a graphical user interface and reporting modules. The graphical user interface will allow users of the database to access desired output roadway link and intersection projections on a year by year basis, via “pointing and clicking” on a map for that information. KHA will assist the GIS and ISS staff in tying this interface in with the County’s internet web based system.

KHA will assist the GIS and ISS staffs in developing formatted output reports of the data that can be printed as part of queries by users of the graphical interface.

KHA will meet with the TPS technical sub committee to explain and receive comments on this Task.

Task L – Technical Report

KHA will prepare a technical report that summarizes the methodology and procedures used in developing the database. The report will also outline a maintenance plan for the database.

The report will be provided for your use in PDF electronic format.

Task M – Database Implementation

KHA will conduct up to two training sessions with Palm Beach County Traffic Division, GIS and ISS staffs where the functionality of the database will be reviewed as part of the implementation of the database.

KHA will meet with the TPS technical sub committee to demonstrate the operation of the database and the user interface for the Traffic Engineering community.

EXHIBIT B

3831

3032



Kimley-Horn
and Associates, Inc.

EXHIBIT "B"
Palm Beach County Traffic Performance Standards Database

Kimley-Horn and Associates, Inc.
4431 Embarcadero Drive
West Palm Beach, Florida 33407
(561) 845-0665

STAFF HOUR & FEE

Palm Beach County Traffic Performance Standards Database

ACTIVITY	KHA										Labor Fee for Billing with operating margin (incl. Sub)
	Chief / Traffic Eng	Project Mgr / Traffic Eng	GIS / Planner	Database Prog.	Analyst	Technician	Admin Support	Hours	Cost For Activity	Average Hourly	
	\$75.00	\$44.50	\$44.00	\$37.00	\$26.00	\$20.15	\$18.00				
A.1 - Initial Meetings	3	5	5	0	0	0	0	13	\$667.50	\$51.35	\$2,700
A.2 - Database Needs Assessment	20	44	48	38	0	0	8	158	\$7,120.00	\$45.06	\$22,400
B - Study (Data) Collection	2.5	37	0.5	0.5	136	0	8	184.5	\$5,554.50	\$30.11	\$18,600
C - Summarize Data and Identify Missing Data	8	24	0	3	257	0	0	292	\$8,461.00	\$28.98	\$38,200
D - Study (Data) Compilation	4	12	0	0	94	0	0	110	\$3,278.00	\$29.80	\$18,600
E - Double Counting Adjustment	5	15	3	8	19	0	0	50	\$1,964.50	\$39.29	\$6,800
F - Background Traffic Correction	10.5	23	3	90	0	0	0	126.5	\$5,273.00	\$41.68	\$22,000
G - Intersection Turning Movement Projections	10	23	8	8	43	0	0	92	\$3,539.50	\$38.47	\$12,000
H - Database Structure and Map Interface	8	56	120	240	40	0	0	464	\$18,292.00	\$39.42	\$58,400
I - Data Entry	2	9	0	0	8	0	120	139	\$2,918.50	\$21.00	\$15,000
J - Test Output	2	8	16	32	48	0	0	106	\$3,642.00	\$34.36	\$11,300
K - Develop Graphical User Interface and Reporting Modules	7	7	3	40	0	0	0	57	\$2,448.50	\$42.96	\$7,900
L - Technical Report	5	19	19	56	20	20	20	159	\$5,411.50	\$34.03	\$16,900
M - Database Implementation	12	13	14	46	4	0	0	89	\$3,900.50	\$43.83	\$13,200
TOTAL STAFF HOURS	99	295	239.5	561.5	669	20	156	2040	\$72,471.00		
TOTAL SALARY COSTS	\$7,425.00	\$13,127.50	\$10,538.00	\$20,775.50	\$17,394.00	\$403.00	\$2,808.00	\$72,471.00	\$72,471.00		\$264,000
TOTAL CONTRACT FEE COMPUTATION											
Total Activity Salary Costs (KHA) \$ 72,471.00											
(1) Overhead Additives											
(a) Administrative & General 168.00% \$ 121,751.28											
Subtotal (Salary and Overhead) \$ 194,222.28											
(b) Lump Sum for Operating Margin 10.00% \$ 19,422.23											
Subtotal (Salary Related Costs) \$ 213,644.51											
(2) Subconsultant Services											
(a) MTP Group, Inc. \$ 50,400.00											
Subtotal (Total Labor with Sub) \$ 264,044.51											
(3) Direct Reimbursables (Out-of-Pocket)(Lump Sum) \$24,232.08											
TOTAL \$ 288,276.59											
Reimbursables											
Report Reproduction:											
7 reports (see report detail for Itemization)	\$3,297.98										
Travel Costs:											
Mileage 12 trips @ 560 miles @ \$0.375 / mile	\$2,520.00										
Lodging (24 nights @ \$132.00)	\$3,168.00										
Meals	\$1,368.00										
Training Materials:											
3 Ring View Binders 30 @ \$13.77	\$413.10										
50 sets of color copies (20 pages each)	\$1,500.00										
Project Copies from Cnty & Munis	\$1,665.00										
Software for database development/implementat	\$10,000.00										
Shipping	\$300.00										
Total Reimbursables	\$24,232.08										

R2006 0957

**FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES BETWEEN
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES, INC.**

This First Amendment to Agreement for Professional Engineering Services is made as of JUN 06 2006, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

RECITALS

WHEREAS, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

WHEREAS, the County and Consultant desire to amend the completion date of that Contract to allow work to continue until July 31, 2006.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from December 31, 2005 to July 31, 2006.

Article 2. This amendment shall be retroactive to December 31, 2005.

Article 3. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

[Remainder of page left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

R2006 0957

COUNTY: JUN 06 2006
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

CONSULTANT:
KIMLEY-HORN AND ASSOCIATES,
INC.,
a North Carolina Corporation

BY:

Tony Masilotti
Tony Masilotti, Chairman

BY:

Frederick W. Schwartz
Frederick W. Schwartz, P.E.
Senior Vice President

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

CORPORATE SEAL

WITNESS:

BY:

Judith Croshie
Judith Croshie, Clerk
COUNTY BOARD OF COMMISSIONERS
FLORIDA
SEAL

BY:

Lisa A. Milam
LISA A. Milam
(Printed Name)

BY:

Sharda Dunne
SHARDA DUNNE
(Printed Name)

APPROVED AS TO TERMS
AND CONDITIONS:

BY:

Don Wrenburg

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

BY:

Leonard B.
COUNTY ATTORNEY

R2007-1055

**SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES BETWEEN
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES,
INC.**

This Second Amendment to Agreement for Professional Engineering Services is made as of JUL 10 2007, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

RECITALS

WHEREAS, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

WHEREAS, on June 6, 2006 the County approved a First Amendment to that Contract (R2006-0957) to extend the completion date to July 31, 2006, and

WHEREAS, the County and Consultant desire to further amend the completion date of that Contract to allow work to continue until July 31, 2007.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

Article 1. Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from July 31, 2006 to July 31, 2007.

Article 2. This amendment shall be retroactive to July 31, 2006.

Article 3. Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

[Remainder of page left blank.]

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

2007 2007
COUNTY: JUL 10 2007
PALM BEACH COUNTY, FLORIDA,
a Political Subdivision
of the State of Florida
BOARD OF COUNTY COMMISSIONERS

BY: Addie L. Greene
Addie L. Greene, Chairperson

ATTEST:
Sharon R. Bock,
Clerk & Comptroller
Circuit Court

BY: Sharon Bock
Deputy Clerk

SEAL

APPROVED AS TO TERMS
AND CONDITIONS:

BY: Don Husbey
ENGINEERING DEPARTMENT

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: Robert B.
COUNTY ATTORNEY

CONSULTANT:
KIMLEY-HORN AND
ASSOCIATES, INC.,
a Florida Corporation

BY: Frederick W. Schwartz
Frederick W. Schwartz, P.E.,
Senior Vice President

CORPORATE SEAL

WITNESS:

BY: Lisa A. Milam
LISA A. MILAM
(Printed Name)

BY: Starcia Dunne
STARCA DUNNE
(Printed Name)



Kimley-Horn
and Associates, Inc.

January 29, 2008

Mr. Dan Weisberg, P.E.
Director
Palm Beach County Traffic Division
2300 North Jog Road, 3rd Floor
West Palm Beach, Florida 33411

■
4431 Embarcadero Drive
West Palm Beach, Florida
33407

**Re: Traffic Performance Standards Database Project
Contract Amendment**

Dear Mr. Weisberg:

By means of this letter, Kimley-Horn and Associates, Inc. (KHA) requests that the completion date of the Palm Beach County Traffic Performance Standards (TPS) Database Project be extended to February 29, 2008 and that the remaining amount from the direct expense task be reallocated to the labor task of the original contract.

Overview

As you know, the TPS Database has two components: an "in-house desktop application" and a "web interface component". A functional version of the In-House desktop application was installed on the Palm Beach County Traffic Division computer network prior to July 31, 2007 and we understand that staff has been using this application to help keep internal track of the traffic impacts from committed development activity within Palm Beach County. The web component of the TPS database has taken longer to implement due to various problems that have been encountered with the configuration of this interface within the Palm Beach County computer network and has affected the project schedule.

In addition to the aforementioned problems related to the configuration of the web interface, a few housekeeping items have remained with respect to the desktop application. These items have since been addressed and will be incorporated into the final version of the desktop application to be redeployed to the County. As a result of the aforementioned, delivery of the source codes for the desktop application and web interface was delayed.

Based on recent progress that has been made towards the configuration of the web interface working with the Palm Beach County Information Services staff, we expect that all the remaining items for this project will be completed by February 29, 2008.

■
TEL 561 845 0665
FAX 561 863 8175



Timeline for Project Completion

KHA proposes the following timeline for project completion:

Week ending 2/1/08:

- ◆ Submit revised Data Model.
- ◆ Resolve all Priority 2 Comments on the "Response Matrix to PBC Comments on In-House Application" list.
- ◆ Deploy updated desktop application with programmed changes
- ◆ Begin testing of updated desktop application

Week ending 2/8/08:

- ◆ Finalize testing of updated desktop application.
- ◆ Configure software development environment to facilitate compilation of source code on PBC workstation. This requires PBC to provide a computer with Visual Studio 2003 and ArcGIS 9.1/Arcview with .NetSDK installed for the configuration.

Weeks ending 2/15/08 to 2/29/08:

- ◆ Follow up and complete deployment of desktop application and source code.

Reallocation of Unused Expenses to Labor Budget

We note that as part of the last contract amendment for this project, a provision was included to "allow reallocation of budget amounts among the various labor and direct expense tasks to better balance the project effort with task budgets". Following identifies the specific changes that need to be made to the previously approved labor task and expense budget amounts.

- ◆ Increase labor budget from \$264,000 to \$279,143.27
- ◆ Reduce expense budget from \$24,232.08 to \$9,133.32

As noted, the actual reimbursable expenses we have incurred for this project have turned out to be less than the amount that was budgeted originally. We request that the remaining budget amount be reallocated to the "Task H – Database Structure and Map Interface" labor task. Please note that the above changes do not alter the total contract amount of \$288,276.59 which includes direct expenses as previously approved by Palm Beach County.

The requested reallocation is in recognition of the fact that KHA and our team have expended significantly greater effort beyond what was originally contemplated in the scope with respect to the development and testing of functionality that was regarded as essential to the TPS Database by Palm Beach County. This reallocation will help to defray a portion of the increased cost incurred to us on this job. Attached to this letter are strike through versions of excerpts from the original contract depicting the requested changes including:



- ♦ Section 4 of current contract language
- ♦ Exhibit "B" of current contract.

Closure

We request the extension of the project completion date to allow completion according to the timeline as well as reallocation of the budget amounts as identified in this letter.

While KHA and our team will complete the tasks identified in the "Timeline for Project Completion" we are mindful that the potential exists for functionalities that were once demonstrated and confirmed as working by Palm Beach County staff (within the Desktop and Web Interface Applications), could be rendered inoperable based on subsequent changes to the configuration of various parameters within the Palm Beach County computer network operating environment by Palm Beach County ISS staff. In that event, we believe that any requests by Palm Beach County of KHA and our team for troubleshooting assistance can occur under a separate contract for technical support for the application. It should be noted that we have previously offered this support to Palm Beach County with respect to this application which is a standard arrangement within the industry of software applications.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Frederick W. Schwartz, P.E.
Senior Vice President

FWS/lrcb

Attachments

Cc: Allan Ennis, P.E., AICP – Palm Beach County
Nicholas P. Uhren, P.E. – Palm Beach County
Lorin R.C. Brissett, P.E. – Kimley-Horn and Associates, Inc.

SECTION 3 - PERIOD OF SERVICE

3.1. This is an Agreement for specific professional engineering services as outlined in the Scope of Work detailed in Exhibit A. This Agreement will commence on the day and year first written above and shall remain in effect until the completion of the work outlined in the Scope of Work detailed in Exhibit A. Work on this contract shall be completed by December 31, 2005.

SECTION 4 - PAYMENT TO CONSULTANT

- 4.1. Methods of Payment for Services and Expenses of CONSULTANT.
- 4.1.1 Basic Service: The COUNTY will pay the CONSULTANT a total labor fee of \$271,143-27 detailed in Exhibit 4, based on the Fee Schedule detailed in Exhibit B.
- 4.1.2 Reimbursable expenses: The COUNTY will pay the CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY. The payment reimbursable expenses shall not exceed estimated costs, as detailed in the fee schedule in Exhibit B. No reimbursable expenses will be incurred without additional authorization from the COUNTY.
- 4.1.3 Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number B-40-633 adopted April 4, 1989.
- 4.2. Payment
- 4.2.1. Payments to the CONSULTANT shall be due and payable monthly in proportion to the percentage Task completed as approved and accepted by the COUNTY.
- 4.3. Other Provisions Concerning Payment
- 4.3.1. Records of CONSULTANT'S Salary Costs pertinent to CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the COUNTY on request prior to final payment for CONSULTANT'S services.

SECTION 5 - GENERAL CONSIDERATION

5.1. Termination

This Agreement may be canceled by the CONSULTANT upon thirty (30) days prior written notice to the terms of this Agreement in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY with or without cause, immediately upon written notice to the CONSULTANT. Upon any such termination, the CONSULTANT hereby waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits, an account thereof. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the COUNTY's satisfaction through the date of termination plus reasonable direct out costs. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.

EXHIBIT "B"
Palm Beach County Traffic Performance Standards Database



Kimley-Horn and Associates, Inc.
 4431 Embarcadero Drive
 West Palm Beach, Florida 33407
 (561) 845-0885

Kinley-Horn and Associates, Inc. 4431 Embroidero Drive West Palm Beach, Florida 33407 (561) 845-0885		STAFF HOUR & FEE									
Palm Beach County Traffic Performance Standards Database											
ACTIVITY	KHA							Hours	Cost For Activity	Average Hourly	Labor Fee for Billing with operating margin (incl. Sub)
	Chief / Traffic Eng	Project Mgr / Traffic Eng	GIS / Planner	Database Prog.	Analyst	Technician	Admin Support				
	\$75.00	\$44.50	\$44.00	\$37.00	\$26.00	\$20.15	\$18.00				
A.1 - Initial Meetings	3	6	6	0	0	0	0	13	\$967.50	\$51.35	\$2,700
A.2 - Database Needs Assessment	20	44	48	38	0	0	0	158	\$7,120.00	\$45.06	\$22,400
B - Study (Data) Collection	2.5	97	0.5	0.5	136	8	8	184.5	\$5,554.50	\$30.11	\$18,800
C - Summarize Data and Identify Missing Data	8	24	0	0	287	0	0	292	\$8,481.00	\$28.88	\$36,200
D - Study (Data) Completion	4	12	0	0	84	0	0	110	\$3,278.00	\$29.80	\$16,800
E - Double Counting Adjustment	5	15	3	8	19	0	0	80	\$1,984.50	\$39.29	\$6,800
F - Background Traffic Correction	10.5	23	9	90	0	0	0	128.5	\$5,273.00	\$41.86	\$22,000
G - Intersection Turning Movement Projections	10	23	8	8	43	0	0	92	\$3,539.50	\$38.47	\$12,000
H - Database Structure and Map Interface	8	88	120	240	40	0	0	464	\$18,282.00	\$39.42	\$73,543.27
I - Data Entry	2	8	0	0	8	0	120	138	\$2,918.50	\$21.00	\$15,000
J - Test Output	2	8	18	32	48	0	0	106	\$3,642.00	\$34.36	\$11,300
K - Develop Graphical User Interface and Reporting Modules	7	7	3	40	0	0	0	87	\$2,448.50	\$42.96	\$7,900
L - Technical Report	5	19	19	55	20	20	20	189	\$5,411.50	\$34.03	\$16,900
M - Database Implementation	12	13	14	48	4	0	0	89	\$3,900.50	\$43.83	\$13,200
TOTAL STAFF HOURS	99	285	239.5	561.5	669	20	158	2040	\$72,471.00		\$279,143.27
TOTAL SALARY COSTS	\$7,425.00	\$13,127.50	\$10,536.00	\$20,775.50	\$17,384.00	\$403.00	\$2,808.00	\$72,471.00	\$72,471.00		\$284,000.00
TOTAL CONTRACT FEE COMPUTATION											
Total Activity Salary Costs (KHA)								\$ 72,471.00			
(1) Overhead Additives											
(a) Administrative & General								165.00%	\$ 121,781.28		
Subtotal (Salary and Overhead)								\$ 194,222.28			
(b) Lump Sum for Operating Margin								10.00%	\$ 19,422.23		
Subtotal (Salary Related Costs)								\$ 213,644.51			
(2) Subconsultant Services											
(a) MTP Group, Inc.									\$ 60,400.00		
Subtotal (Total Labor with Sub)								\$ 279,143.27			
(3) Direct Reimbursables (Out-of-Pocket)(Lump Sum)								\$9,133.32			
TOTAL								\$285,276.59			
Reimbursables											
Report Reproduction:											
7 reports (see report detail for itemization)	\$2,207.98										
Travel Costs:											
Mileage 12 trips @ 560 miles @ \$0.375 / mile	\$568.95										
Lodging (24 nights @ \$132.00)	\$3,177.47										
Meals	\$1,368.00										
Training Materials:											
3 Ring View Binders 30 @ \$13.77	\$413.00										
50 sets of color copies (20 pages each)	\$1,000.00										
Project Copies from Crty & Munic	\$4,865.00										
Software for database development/implementa	\$5,389.94										
Shipping	\$300.00										
Total Reimbursables	\$9,133.32										
	\$24,232.08										